

**UNITED STATES DISTRICT COURT  
SOUTHERN DISTRICT OF NEW YORK**

x

**PAUL WEATHER,**

Plaintiff,

**Index No. 08 CIV 0192**

-against-

CITY OF MOUNT VERNON and SERGEANT  
MICHAEL MARCUCILLI in his individual  
and official capacity,

Defendants.

x

**CERTIFICATE OF SERVICE**

I hereby certify that on **February 5, 2008**, I electronically filed a

**ANSWER**

with the Clerk of the Southern District Court using its CM/ECF system, which  
would then electronically notify the following CM/ECF participants on this case

**MAYO G. BARLETT, ESQ.  
Attorney For Plaintiff  
YOUNG & BARTLETT, LLP  
81 MAIN STREET, SUITE 118  
WHITE PLAINS, NY 10601  
(914) 285-1500**

Dated: Mount Vernon, New York  
February 5, 2008

By: Hina Sherwani  
HINA SHERWANI (HS8283)  
ASSISTANT CORPORATION COUNSEL  
HELEN M. BLACKWOOD, ESQ.  
Office of the Corporation Counsel  
Attorney for City of Mount Vernon  
1 Roosevelt Square  
Mount Vernon, New York 10550  
(914) 665-2366

UNITED STATES DISTRICT COURT  
SOUTHERN DISTRICT OF NEW YORK

-----X  
**PAUL WEATHER,**

Plaintiff,

**Index No. 08 CIV 0192**

-against-

**ANSWER**

CITY OF MOUNT VERNON and SERGEANT  
MICHAEL MARCUCILLI in his individual  
and official capacity,

Defendants.  
-----X

Defendants, CITY OF MOUNT VERNON and SERGEANT MICHAEL  
MARCUCILLI, by the Office of the Corporation Counsel, HELEN M. BLACKWOOD  
answering the Complaint of Plaintiff alleges, upon information and belief:

1. Admits the allegations contained in paragraphs numbered "12", "13", "14",  
"15", "29", "30" and "31" of the Complaint.
2. Denies knowledge or information sufficient to form a belief as to the truth  
of each and every allegation contained in paragraphs numbered "11", "26" of the  
Complaint.
3. Denies the truth of each and every allegation contained in paragraphs  
numbered "1", "2", "3", "4", "5", "6", "7", "8", "16", "17", "18", "19", "20", "21", "22", "23",  
"24", "25", "27" and "28".
4. Defendants do not object to jurisdiction (paragraph "9") or venue  
(paragraph "10").

**AS AND FOR AN ANSWER TO THE FIRST CAUSE OF ACTION**

5. Answering paragraph numbered "32" of plaintiff's Verified Complaint,  
Defendant repeats, reiterates and realleges each and every denial and admission

contained in paragraphs numbered "1" through "31" with the same force and effect as if fully set forth at length herein.

6. Denies the truth of each and every allegation contained in paragraphs numbered "33", "34", "35" and "36" of the Complaint.

**AS AND FOR AN ANSWER TO THE SECOND CAUSE OF ACTION**

8. Answering paragraph numbered "37" of plaintiff's Verified Complaint, Defendant repeats, reiterates and realleges each and every denial and admission contained in paragraphs "1" through "36" with the same force and effect as if fully set forth at length herein.

9. Denies the truth of each and every allegation contained in paragraphs numbered "38", "39", "40" and "41".

**AS AND FOR AN ANSWER TO THE THIRD CAUSE OF ACTION**

10. Answering paragraph numbered "42" of plaintiff's Verified Complaint, Defendant repeats, reiterates and realleges each and every denial and admission contained in paragraphs "1" through "41" with the same force and effect as if fully set forth at length herein.

11. Denies the truth of each and every allegation contained in paragraphs numbered "43", "44", "45", "46" of the Complaint.

**AS AND FOR AN ANSWER TO THE FOURTH CAUSE OF ACTION**

12. Answering paragraph numbered "47" of plaintiff's Verified Complaint, Defendant repeats, reiterates and realleges each and every denial and admission contained in paragraphs "1" through "46" with the same force and effect as if fully set forth at length herein.

13. Denies the truth of each and every allegation contained in paragraphs numbered "48", "49", "50", "51", "52", "53", "54", "55", "56", "57", "58" of the Complaint.

**AS AND FOR AN ANSWER TO THE FIFTH CAUSE OF ACTION**

14. Answering paragraph numbered "59" of plaintiff's Verified Complaint, Defendant repeats, reiterates and realleges each and every denial and admission contained in paragraphs "1" through "58" with the same force and effect as if fully set forth at length herein.

15. Denies the truth of each and every allegation contained in paragraphs numbered "60", "61" and "62" of the Complaint.

**AS AND FOR A FIRST AFFIRMATIVE DEFENSE**

If the plaintiff sustained damages as alleged in the complaint, which is expressly denied by these answering defendants, then such damages were caused in whole or in part by the culpable conduct of the plaintiff. The amount of damages otherwise recoverable, if any, shall therefore be diminished in the proportion that said culpable conduct attributable to plaintiff bears to the culpable conduct that caused such injuries.

**AS AND FOR A SECOND AFFIRMATIVE DEFENSE**

Plaintiff's complaint fails to state a claim upon which relief may be granted.

**AS AND FOR A THIRD AFFIRMATIVE DEFENSE**

If the plaintiff sustained damages, as alleged in the complaint, other than by reason of his own culpable conduct and comparative negligence, which is expressly denied by defendant, then such injuries and damages were caused in whole or in part by the culpable conduct of some third person or persons over whom the defendants exercised no control.

**AS AND FOR A FOURTH AFFIRMATIVE DEFENSE**

Plaintiff is not entitled to recover punitive damages against SERGEANT MICHAEL MARCUCILLI in his individual or official capacity or any other Officer of the Mount Vernon Police Department since his conduct did not rise to the level of culpable conduct that would support such a claim.

**AS AND FOR A FIFTH AFFIRMATIVE DEFENSE**

Defendants acted in good faith and without intent to violate plaintiff's civil rights.

**AS AND FOR A SIXTH AFFIRMATIVE DEFENSE**

Any and all officers named in this suit are protected from suit by the doctrine of qualified immunity.

**AS AND FOR A SEVENTH AFFIRMATIVE DEFENSE**

Any and all officers named in this suit are protected from suit by the doctrine of absolute immunity.

**AS AND FOR AN EIGHTH AFFIRMATIVE DEFENSE**

Plaintiff's constitutional and statutory rights were not violated by the defendants.

**AS AND FOR A NINTH AFFIRMATIVE DEFENSE**

The City of Mount Vernon cannot be held liable based on respondent superior for the alleged violations of plaintiff's civil rights.

**AS AND FOR AN TENTH AFFIRMATIVE DEFENSE**

Plaintiff's claims against the answering defendants are frivolous.

**AS AND FOR AN ELEVENTH AFFIRMATIVE DEFENSE**

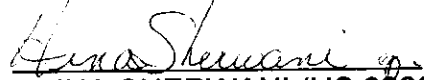
The actions of the defendants were justified under the circumstances.

**WHEREFORE**, Defendants, demand judgment dismissing the Complaint, or in the event defendants are adjudged liable, granting judgment over or apportioning such liability in accordance with its equitable share of responsibility and awarding the costs of this action, together with such other and further relief as this Court deems just and proper.

Dated: Mount Vernon, New York  
January 30, 2008

Yours, etc.,

Office of the Corporation Counsel  
Attorney for Defendant  
The City of Mount Vernon  
Office and PO Address  
One Roosevelt Square  
Mount Vernon, New York 10550

A handwritten signature in cursive script, appearing to read "Hina Sherwani", written over a horizontal line.

By: HINA SHERWANI (HS 8283)

To: MAYO G. BARLETT, ESQ.  
YOUNG & BARTLETT, LLP  
81 MAIN STREET, SUITE 118  
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